

AMENDED IN ASSEMBLY AUGUST 1, 2016

AMENDED IN ASSEMBLY JUNE 20, 2016

AMENDED IN ASSEMBLY MAY 23, 2016

AMENDED IN SENATE JANUARY 4, 2016

AMENDED IN SENATE APRIL 15, 2015

**SENATE BILL**

**No. 215**

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**Introduced by Senators Leno and Hueso**

February 12, 2015

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An act to amend Sections 309.6, 1701.1, 1701.2, 1701.3, 1701.4, and 1701.5 of, and to add Sections 1701.6 and 1701.7 to, the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 215, as amended, Leno. Public Utilities Commission.

(1) The California Constitution establishes the Public Utilities Commission, with jurisdiction over all public utilities. The California Constitution grants the commission certain general powers over all public utilities, subject to control by the Legislature, and authorizes the Legislature, unlimited by the other provisions of the California Constitution, to confer additional authority and jurisdiction upon the commission that is cognate and germane to the regulation of public utilities. *Legislature*. Existing law requires the commission, upon initiating a hearing, to assign one or more commissioners to oversee the case and an administrative law judge, ~~where~~ *when* appropriate. Existing law requires the assigned commissioner to prepare and issue, by order or ruling, a scoping memo that describes the issues to be considered and the applicable timetable for resolution. Existing law

requires the commission to adopt procedures on the disqualification of administrative law judges due to bias or prejudice similar to those of other state agencies and superior courts.

This bill would require the commission to additionally adopt procedures on the disqualification of commissioners due to bias or prejudice similar to those of other state agencies and superior courts. For ratesetting or adjudicatory proceedings, the bill would require a commissioner or an administrative law judge to be disqualified for bias or prejudice based on specified criteria. The bill would prohibit commission procedures from authorizing a commissioner or administrative law judge ~~from ruling to rule~~ on a motion made by a party to a proceeding to disqualify the commissioner or administrative law judge due to bias or prejudice.

(2) The Public Utilities Act requires the commission to determine whether a proceeding requires a hearing and, if so, to determine whether the matter requires a quasi-legislative, ~~an~~ adjudication, or a ratesetting hearing. For these purposes, quasi-legislative cases are cases that establish policy rulemakings and investigations, which may establish rules affecting an entire industry, adjudication cases are enforcement cases and complaints, except those challenging the reasonableness of any rates or charges, and ratesetting cases are cases in which rates are established for a specific company, including general rate cases, performance-based ratemaking, and other ratesetting mechanisms. The act ~~regulates communications in hearings before the commission and~~ defines “ex parte communication” ~~to mean~~ as any oral or written communication between a decisionmaker and a person with an interest in a matter before the commission concerning substantive, but not procedural, issues that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter. Existing law defines “person with an interest” to mean, among other things, a person with a financial interest in a matter before the commission, ~~or~~ an agent or employee of the person with a financial interest, or a person receiving consideration for representing the person with a financial interest. Existing law requires the commission, by regulation, to adopt and publish a definition of the terms “decisionmaker” and “persons” for those purposes, along with any requirements for written reporting of ex parte communications and appropriate sanctions for noncompliance with any rule proscribing ex parte communications. The act provides that ex parte communications are prohibited in adjudication ~~cases and are prohibited in~~ ratesetting

cases, with certain exceptions. The act requires that ex parte communications be permitted in quasi-legislative cases, without any restrictions. ~~The commission's Rules of Practice and Procedure define a "decisionmaker" as any commissioner, the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, the assigned administrative law judge, or the Law and Motion Administrative Law Judge. The Rules of Practice and Procedure provide that communications with a commissioner's personal advisors are subject to all of the restrictions on, and reporting requirements applicable to, ex parte communications, except that oral communications with an advisor in ratesetting proceedings are permitted without specified restrictions.~~

This bill would require that the commission determine whether ~~every~~ *each* proceeding, not just those requiring a hearing, is a quasi-legislative, adjudication, or ratesetting proceeding. The bill would delete the provision that an ex parte communication concerns a substantive, but not a ~~procedural~~ *procedural*, matter, and instead would provide that an ex parte communication concerns any matter that the commission has not specified in its Rules of Practice and Procedure as being a procedural matter and that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter. ~~The bill would prohibit the commission from considering as a procedural matter communications between an interested person and a decisionmaker regarding which commissioner or administrative law judge may be assigned to a matter before the commission. The bill would define an interested person to also include a person involved in issuing credit ratings or advising entities or persons who invest in the shares or operations of any party to a proceeding. The bill would require that the commission, which is already required to adopt and publish a definition of decisionmakers for ex parte purposes, commission include in its definition of "decisionmaker" the commissioners and certain other individuals in the commission as "decisionmakers."~~ *commission.*

This bill would require a decisionmaker, in an adjudication or ratesetting case, who participates in an ex parte communication to disclose certain information regarding the communication. If an ex parte communication is not disclosed until after the commission has issued a decision on the matter to which the communication pertained, a party not participating in the communication would be authorized to file a petition to rescind or modify the decision. The bill would require the commission to render decisions based upon the record in a case and

would provide that an ex parte communication not be part of the *evidentiary* record of the proceeding.

~~This bill would provide that ex parte communications are permitted in quasi-legislative proceedings and not subject to the above disclosure requirements, unless authorize the commission makes a formal determination that the communications are to determine whether an ex parte communication in a quasi-legislative proceeding is subject to the disclosure requirements or prohibited.~~

This bill would prohibit communications concerning procedural matters in adjudication cases between interested persons and decisionmakers, except for the assigned administrative law judge.

Under existing law, the exceptions to the prohibition upon ex parte communications in ratesetting proceedings authorize a commissioner to permit oral ex parte communications if all interested parties are invited and given not less than 3 days' notice. If an ex parte communication meeting is granted to any party, it is required that all other parties also be granted individual ex parte meetings of a substantially equal period of time and that all parties be sent a notice of that authorization at the time the request is granted, at least 3 days prior to the meeting. The exceptions authorize a commissioner to permit written ex parte communications by any party if copies of the communication are transmitted to all parties.

~~This bill would instead subject ex parte communications in ratesetting cases to specified disclosure requirements. requirements and would authorize the commission to prohibit ex parte communications in a ratesetting case. The bill would authorize a commissioner decisionmaker to permit an oral ex parte communication relative to procedural matters if all interested parties are invited and given not less than 3 days' notice. notice and, upon request, individual ex parte communication meetings are granted to those other parties. The bill would prohibit written ex parte communications concerning procedural matters in ratesetting cases between parties or persons with an interest and decisionmakers other than the assigned administrative law judge, except that authorize a commissioner would be authorized to permit a written communication relative to procedural issues by any party interested person if copies of the communication are transmitted to all parties on the same day. day, but the written communication would not be a part of the record of the proceeding.~~

~~This bill would expressly make the ex parte communications relating to adjudicatory or ratesetting proceedings that occur at conferences~~

~~subject to the disclosure requirements. The bill would also make disclosure requirements developed by the commission applicable to ex parte communications relating to within the scope of quasi-legislative proceedings that occur at conferences.~~

This bill would authorize the commission to impose civil sanctions, including civil penalties, on any entity or person, other than a decisionmaker or employee of the commission, that violates ex parte communication requirements. The bill would authorize the Attorney General to bring an enforcement action in superior court against a decisionmaker or employee of the commission who violates the ex parte communication requirements.

(3) The Political Reform Act of 1974 (PRA) provides for the regulation of the lobbying industry, including defining the term “lobbyist” and regulating the conduct of lobbyists.

This bill would state that it is the intent of the Legislature that the commission, and any entity or person seeking to influence actions taken by the commission, be subject to all applicable ethical standards, including any applicable obligations under the PRA, including applicable lobbying obligations.

(4) Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by expanding the application of a crime.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 309.6 of the Public Utilities Code is
- 2 amended to read:
- 3 309.6. (a) The commission shall adopt procedures on the
- 4 disqualification of commissioners and administrative law judges

1 due to bias or prejudice similar to those of other state agencies and  
2 superior courts.

3 (b) (1) For ratesetting and adjudicatory proceedings, a  
4 commissioner or administrative law judge shall be disqualified for  
5 bias or prejudice based on either of the following:

6 (A) Actions taken during the proceeding that demonstrate bias  
7 or prejudice.

8 (B) Actions demonstrating any commitment to provide relief  
9 to a party.

10 (2) Past work experience by the commissioner or administrative  
11 law judge shall not be a sufficient basis for demonstrating bias or  
12 prejudice pursuant to paragraph (1).

13 (c) The commission procedures shall not authorize a  
14 commissioner or administrative law judge to rule on a motion  
15 made by a party to a proceeding to disqualify the commissioner  
16 or administrative law judge due to bias or prejudice.

17 (d) The commission shall develop the procedures with the  
18 opportunity for public review and comment.

19 SEC. 2. Section 1701.1 of the Public Utilities Code is amended  
20 to read:

21 1701.1. (a) The commission shall determine whether each  
22 proceeding is a quasi-legislative, an adjudication, or a ratesetting  
23 proceeding and, consistent with due process, public policy, and  
24 statutory requirements, determine whether the proceeding requires  
25 a hearing. The commission's decision as to the nature of the  
26 proceeding shall be subject to a request for rehearing within 10  
27 days of the date of that decision or of any subsequent ruling that  
28 expands the scope of the proceeding. Only those parties who have  
29 requested a rehearing within that time period shall subsequently  
30 have standing for judicial review and that review shall only be  
31 available at the conclusion of the proceeding. The commission  
32 shall render its decision regarding the rehearing within 30 days.  
33 The commission shall establish rules regarding ex parte  
34 communication on case categorization issues.

35 (b) The commission, upon initiating an adjudication proceeding  
36 or ratesetting proceeding, shall assign one or more commissioners  
37 to oversee the case and an administrative law judge ~~where~~ *when*  
38 appropriate. The assigned commissioner shall schedule a prehearing  
39 conference. The assigned commissioner shall prepare and issue  
40 by order or ruling a scoping memo that describes the issues to be

considered and the applicable timetable for resolution. The administrative law judge shall either preside and conduct, or assist the assigned commissioner or commissioners in presiding and conducting, any evidentiary or adjudication hearing that may be required.

(c) The commission, upon initiating a quasi-legislative proceeding, shall assign one or more commissioners to oversee the case and an administrative law judge, where appropriate, who may be assisted by a technical advisory staff member in conducting the proceeding. The assigned commissioner shall prepare and issue by order or ruling a scoping memo that describes the issues to be considered and the applicable timetable for resolution.

(d) (1) Quasi-legislative cases, for purposes of this article, are cases that establish policy, including, but not limited to, rulemakings and investigations which may establish rules affecting an entire industry.

(2) Adjudication cases, for purposes of this article, are enforcement cases and complaints except those challenging the reasonableness of any rates or charges as specified in Section 1702.

(3) Ratesetting cases, for purposes of this article, are cases in which rates are established for a specific company, including, but not limited to, general rate cases, performance-based ratemaking, and other ratesetting mechanisms.

(4) “All-party conference,” for purposes of this article, is a public hearing held on the record before a quorum of commissioners at which *all* parties to a proceeding shall have the right to participate and communicate their views regarding any factual, legal, or policy issue in the proceeding.

(e) (1) (A) “Ex parte communication,” for purposes of this article, means any oral or written communication between a decisionmaker and an interested person concerning any matter before the commission that the commission has not specified in its Rules of Practice and Procedure as being a procedural matter and that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter. The commission shall specify in its Rules of Practice and Procedure, enacted by rulemaking, the types of issues considered procedural matters under this article.—~~Any communication between an interested person and a decisionmaker regarding which commissioner or administrative law judge may~~

1 be assigned to a matter before the commission shall not be deemed  
2 to be a procedural matter and shall be an ex parte communication  
3 subject to this article.

4 (B) “Interested person,” for purposes of this article, means any  
5 of the following:

6 (i) Any applicant, an agent or an employee of the applicant, or  
7 a person receiving consideration for representing the applicant, or  
8 a participant in the proceeding on any matter before the  
9 commission.

10 (ii) Any person with a financial interest, as described in Article  
11 1 (commencing with Section 87100) of Chapter 7 of Title 9 of the  
12 Government Code, in a matter before the commission, or an agent  
13 or employee of the person with a financial interest, or a person  
14 receiving consideration for representing the person with a financial  
15 interest. A person involved in issuing credit ratings or advising  
16 entities or persons who invest in the shares or operations of any  
17 party to a proceeding is a person with a financial interest.

18 (iii) A representative acting on behalf of any civic,  
19 environmental, neighborhood, business, labor, trade, or similar  
20 organization who intends to influence the decision of a commission  
21 member on a matter before the commission.

22 (iv) Other categories of individuals deemed by the commission,  
23 by rule, to be an interested person.

24 (2) The commission shall by rule adopt and publish a definition  
25 of decisionmakers and interested persons for purposes of this  
26 article, along with any requirements for written reporting of ex  
27 parte communications and appropriate sanctions for noncompliance  
28 with any rule proscribing ex parte communications. The definition  
29 of decisionmakers shall include, but is not limited to, to: each  
30 commissioner; the attorney for the commission; the executive  
31 director of the commission; the personal staff of a commissioner  
32 if the staff is acting in a policy or legal advisory capacity; the chief  
33 administrative law judge of the commission; and the administrative  
34 law judge assigned to the proceeding. *The commission shall, by*  
35 *rule, explicitly ban any communication between an interested*  
36 *person and a decisionmaker regarding which commissioner or*  
37 *administrative law judge may be assigned to a matter before the*  
38 *commission.*

39 (3) For adjudication cases, the rules shall provide that ex parte  
40 communications shall be prohibited, as required by this article.



1 The rules shall provide that if an ex parte communication occurs  
2 that is prohibited by this article, or if an ex parte communication  
3 occurs in a ratesetting case, whether initiated by a decisionmaker  
4 or an interested person, all of the following shall be required:

5 (A) The interested person shall report the communication within  
6 three working days of the communication by filing a notice with  
7 the commission that includes all the following:

8 (i) The date, time, and location of the communication, whether  
9 the communication was oral or written, or a combination of both,  
10 and the communication medium utilized.

11 (ii) The identity of the decisionmaker, the identity of the person  
12 initiating the communication, and any other persons present.

13 (iii) *Topics of the communication, including applicable*  
14 *proceeding numbers.*

15 ~~(iii)~~

16 (iv) A complete description of the interested person's  
17 communication and its content.

18 ~~(iv)~~

19 (v) A copy of any written material or text used during the  
20 communication.

21 (B) Any decisionmaker who participated in the communication  
22 shall comply with both of the following:

23 (i) If the interested person who participated in the  
24 communication has not timely submitted the notice required by  
25 subparagraph (A), the decisionmaker shall refer the matter to a  
26 commission attorney and promptly prepare and file a notice that  
27 includes the information required by subparagraph (A) and a  
28 complete description of the decisionmaker's communication and  
29 its content.

30 (ii) If the interested person has timely submitted the notice  
31 required by subparagraph (A), the decisionmaker shall promptly  
32 file a notice that includes a complete description of the  
33 decisionmaker's communication and its content and, if appropriate,  
34 that corrects or supplements, as applicable, the factual  
35 representations made by the interested person.

36 (4) The commission shall not take any vote on a matter in which  
37 a notice of a *prohibited ex parte communication* has been filed  
38 pursuant to subparagraph (A) or (B) of paragraph (3) until all  
39 parties to the proceeding have been provided a reasonable  
40 opportunity to respond to the communication.

(5) If an ex parte communication is not disclosed as required by this subdivision until after the commission has issued a decision on the matter to which the ~~prohibited~~ communication pertained, a party not participating in the communication may file a petition to rescind or modify the decision. The party may seek a finding that the ex parte communication ~~was prohibited and~~ significantly influenced the decision's process or outcome as part of any petition to rescind or modify the decision. The commission shall process the petition in accordance with the commission's procedures for petitions for modification and shall issue a decision on the petition no later than 180 days after the filing of the petition.

(6) (A) Ex parte communications that occur at conferences that ~~are related to~~ *within the scope of* an adjudication or ratesetting proceeding shall be ~~prohibited and~~ subject to the ~~disclosure~~ requirements of this article.

(B) Ex parte communications that occur at conferences and that ~~are related to~~ *within the scope of* a quasi-legislative proceeding shall be governed by the ex parte communication disclosure requirements developed by the commission.

(C) For purposes of this section, "ex parte communications that occur at conferences" includes, but is not limited to, communications in a private setting or during meals, entertainment events, and tours, and informal discussions among conference attendees.

(7) The commission shall render its decisions based on the evidence in the record. Ex parte communications shall not be a part of the *evidentiary* record of the proceedings.

(f) The commission may meet in a closed session to discuss administrative matters so long as no collective consensus is reached or vote taken on any matter requiring a vote of the commissioners. The commission shall, by rule, adopt and publish a definition of "administrative matters" for purposes of this section.

(g) The commission shall permit written comments received from the public to be included in the record of its ~~proceedings~~. *proceedings, but the comments shall not be treated as evidence.* The commission shall provide parties to the proceeding a reasonable opportunity to respond to any public comments included in the record of proceedings.

(h) It is the intent of the Legislature that the commission, and any entity or person seeking to influence actions taken by the

1 commission, shall be subject to all applicable ethical standards,  
2 including any applicable obligations under the Political Reform  
3 Act of 1974 (Title 9 (commencing with Section 81000) of the  
4 Government Code), including, but not limited to, any applicable  
5 lobbying obligations.

6 SEC. 3. Section 1701.2 of the Public Utilities Code is amended  
7 to read:

8 1701.2. (a) If the commission pursuant to *subdivision (a) of*  
9 Section 1701.1 has determined that an adjudication case requires  
10 a hearing, the assigned commissioner or the assigned administrative  
11 law judge shall hear the case in the manner described in the scoping  
12 memo. The scoping memo shall designate whether the assigned  
13 commissioner or the assigned administrative law judge shall preside  
14 in the case.

15 (b) The commission shall provide by rule for peremptory  
16 challenges and challenges for cause of the administrative law judge.  
17 Challenges for cause shall include, but not be limited to, financial  
18 interests and prejudice. The rule shall provide that all parties are  
19 entitled to one peremptory challenge of the assignment of the  
20 administrative law judge in all cases. All parties are entitled to  
21 unlimited peremptory challenges in any case in which the  
22 administrative law judge has within the previous 12 months served  
23 in any capacity in an advocacy position at the commission, been  
24 employed by a regulated public utility, or has represented a party  
25 or has been an interested person in the case.

26 (c) The assigned commissioner or the administrative law judge  
27 shall prepare and file a decision setting forth recommendations,  
28 findings, and conclusions. The decision shall be filed with the  
29 commission and served upon all parties to the action or proceeding  
30 without undue delay, not later than 60 days after the matter has  
31 been submitted for decision. The decision of the assigned  
32 commissioner or the administrative law judge shall become the  
33 decision of the commission if no further action is taken within 30  
34 days. Any party may appeal the decision to the commission,  
35 provided that the appeal is made within 30 days of the issuance of  
36 the decision. The commission may itself initiate a review of the  
37 proposed decision on any grounds.

38 (d) The commission may hold an all-party conference before a  
39 quorum of commissioners at which all parties have an opportunity  
40 to be heard. The commission shall adopt rules for implementation

1 of all-party conferences that ensure the broadest participation by  
2 parties to the proceeding that the commission can reasonably  
3 accommodate consistent with the commissioners' other duties and  
4 responsibilities.

5 (e) The commission's decision shall be supported by findings  
6 of fact on all issues material to the decision, and the findings of  
7 fact shall be based on the record developed by the assigned  
8 commissioner or the administrative law judge. A decision different  
9 from that of the assigned commissioner or the administrative law  
10 judge shall be accompanied by a written explanation of each of  
11 the changes made to the decision.

12 (f) Notwithstanding Section 307, an officer, employee, or agent  
13 of the commission that is personally involved in the prosecution  
14 or in the supervision of the prosecution of an adjudication case  
15 before the commission shall not participate in the decision of the  
16 ~~case, case or in the decision of~~ any factually related adjudicatory  
17 proceeding, including participation in or advising the commission  
18 as to findings of fact, conclusions of law, or orders. An officer,  
19 employee, or agent of the commission that is personally involved  
20 in the prosecution or in the supervision of the prosecution of an  
21 adjudication case may participate in reaching a settlement of the  
22 case, but shall not participate in the decision of the commission to  
23 accept or reject the settlement, except as a witness or counsel in  
24 an open hearing or a hearing closed pursuant to subdivision (h).  
25 The Legislature finds that the commission performs both  
26 prosecutorial and adjudicatory functions in an adjudication case  
27 and declares its intent that an officer, employee, or agent of the  
28 commission, including its attorneys, may perform only one of  
29 those functions in any adjudication case or factually related  
30 adjudicatory proceeding.

31 (g) (1) Ex parte communications shall be prohibited in  
32 adjudication cases.

33 (2) Any oral or written communications concerning procedural  
34 matters in adjudication cases between interested persons and  
35 decisionmakers, except the assigned administrative law judge,  
36 shall be prohibited.

37 (h) Notwithstanding any other law, the commission may meet  
38 in a closed hearing to consider the decision that is being appealed.  
39 The vote on the appeal shall be in a public meeting and shall be  
40 accompanied with an explanation of the appeal decision.

1 (i) Adjudication cases shall be resolved within 12 months of  
2 initiation unless the commission makes findings why that deadline  
3 cannot be met and issues an order extending that deadline. In the  
4 event that a rehearing of an adjudication case is granted, the parties  
5 shall have an opportunity for final oral argument.

6 (j) (1) The commission may determine that the respondent  
7 lacks, or may lack, the ability to pay potential ~~penalties or fines~~  
8 *penalties, fines*, or ~~to pay~~ restitution that may be ordered by the  
9 commission.

10 (2) If the commission determines that a respondent lacks, or  
11 may lack, the ability to pay, the commission may order the  
12 respondent to demonstrate, to the satisfaction of the commission,  
13 sufficient ability to pay potential penalties, fines, or restitution that  
14 may be ordered by the commission. The respondent shall  
15 demonstrate the ability to pay, or make other financial  
16 arrangements satisfactory to the commission, within seven days  
17 of the commission commencing an adjudication case. The  
18 commission may delegate to the attorney to the commission the  
19 determination of whether a sufficient showing has been made by  
20 the respondent of an ability to pay.

21 (3) Within seven days of the commission's determination of the  
22 respondent's ability to pay potential penalties, fines, or restitution,  
23 the respondent shall be entitled to an impartial review by an  
24 administrative law judge of the sufficiency of the showing made  
25 by the respondent of the respondent's ability to pay. The review  
26 by an administrative law judge of the ability of the respondent to  
27 pay shall become part of the record of the adjudication and is  
28 subject to the commission's consideration in its order resolving  
29 the adjudication case. The administrative law judge may enter  
30 temporary orders modifying any financial requirement made of  
31 the respondent pending the review by the administrative law judge.

32 (4) A respondent that is a public utility regulated under a rate  
33 of return or rate of margin regulatory structure or that has gross  
34 annual revenues of more than one hundred million dollars  
35 (\$100,000,000) generated within California is presumed to be able  
36 to pay potential ~~penalties or fines~~ *penalties, fines*, or ~~to pay~~  
37 restitution that may be ordered by the commission, and, therefore,  
38 paragraphs (1) to (3), inclusive, do not apply to that respondent.

39 SEC. 4. Section 1701.3 of the Public Utilities Code is amended  
40 to read:

1 1701.3. (a) If the commission pursuant to Section 1701.1 has  
2 determined that a ratesetting case requires a hearing, the procedures  
3 prescribed by subdivisions (b), (d), (f), and (i) shall be applicable.

4 (b) The assigned commissioner shall determine prior to the first  
5 hearing whether the commissioner or the assigned administrative  
6 law judge shall be designated as the principal hearing officer. The  
7 principal hearing officer shall be present for more than one-half  
8 of the hearing days. The decision of the principal hearing officer  
9 shall be the proposed decision.

10 (c) An alternate decision may be issued by the assigned  
11 commissioner or the assigned administrative law judge who is not  
12 the principal hearing officer. Any alternate decision may be filed  
13 with the commission and served upon all parties to the proceeding  
14 any time prior to issuance of a final decision by the commission,  
15 consistent with the requirements of Section 311.

16 (d) The commission shall establish a procedure for any party  
17 to request the presence of a commissioner at a hearing. The  
18 assigned commissioner shall be present at any closing arguments  
19 in the case.

20 (e) The principal hearing officer shall present the proposed  
21 decision to the full commission in a public meeting. The alternate  
22 decision, if any, shall also be presented to the full commission at  
23 that public meeting.

24 (f) The presentation to the full commission shall contain a record  
25 of the number of days of the hearing, the number of days that each  
26 commissioner was present, and whether the decision was completed  
27 on time.

28 (g) The commission shall provide by rule for peremptory  
29 challenges and challenges for cause of the administrative law judge.  
30 Challenges for cause shall include, but not be limited to, financial  
31 interests and prejudice. All parties shall be entitled to unlimited  
32 peremptory challenges in any case in which the administrative law  
33 judge has within the previous 12 months served in any capacity  
34 in an advocacy position at the commission, been employed by a  
35 regulated public utility, or has represented a party or has been an  
36 interested person in the case.

37 (h) (1) Ex parte communications in ratesetting cases are subject  
38 to the disclosure requirements of this article. The commission may  
39 ~~make a formal determination prohibiting~~ *prohibit* ex parte

1 communications in a ratesetting case within 90 days of the  
2 commencement of the proceeding case.

3 (A)

4 (2) Oral communications may be permitted by a decisionmaker  
5 if all parties are invited to the meeting and given not less than three  
6 working days' notice. *No individual ex parte meetings shall be*  
7 *held during the three business days before the commission's*  
8 *scheduled vote on the decision.*

9 (3) *If an ex parte communication meeting is granted to any*  
10 *party, all other parties, upon request, shall also be granted*  
11 *individual ex parte meetings of a substantially equal period of time*  
12 *and shall be sent a notice of that opportunity at the time the request*  
13 *is granted.*

14 (B)

15 (4) Written ex parte communications by any interested person  
16 may be permitted if copies of the communication are transmitted  
17 to all parties on the same day as the original communication.

18 ~~Written~~

19 (5) *Written* ex parte communications shall not be part of the  
20 record of the proceeding.

21 (C)

22 (6) The commission may establish a period during which no  
23 oral or written all-party communications may be permitted and  
24 the commission may meet in closed session during that period,  
25 which shall not in any circumstance exceed 14 days. If the  
26 commission holds the decision, it may permit all-party  
27 communications during the first half of the interval between the  
28 hold date and the date that the decision is calendared for final  
29 decision. The commission may meet in closed session for the  
30 second half of that interval.

31 ~~(2) Oral communications concerning a procedural matter in~~  
32 ~~ratesetting cases between interested persons and decisionmakers,~~  
33 ~~except the assigned administrative law judge, are prohibited, except~~  
34 ~~that an oral communication may be permitted at any time by any~~  
35 ~~decisionmaker if all parties are invited and given not less than~~  
36 ~~three working days' notice.~~

37 ~~(3) Written communications concerning a procedural matter in~~  
38 ~~ratesetting cases between interested persons and decisionmakers,~~  
39 ~~except the assigned administrative law judge, are prohibited, except~~  
40 ~~that a decisionmaker may permit a written communication by any~~

1 ~~party if copies of the communication are transmitted to all parties~~  
2 ~~on the same day.~~

3 (i) Any party has the right to present a final oral argument of  
4 its case before the commission. Those requests shall be scheduled  
5 in a timely manner. A quorum of the commission shall be present  
6 for the final oral arguments.

7 (j) After the issuance of a proposed decision in a ratesetting  
8 case, the commission may hold an all-party conference before a  
9 quorum of commissioners at which all parties have an opportunity  
10 to be heard. The commission shall adopt rules for implementation  
11 of all-party conferences that ensure the broadest participation by  
12 parties to the proceeding that the commission can reasonably  
13 accommodate consistent with the commissioners' other duties and  
14 responsibilities.

15 (k) The commission may, in issuing its decision, adopt, modify,  
16 or set aside the proposed decision or any part of the decision based  
17 on evidence in the record. The final decision of the commission  
18 shall be issued not later than 60 days after the issuance of the  
19 proposed decision. Under extraordinary circumstances the  
20 commission may extend this date for a reasonable period. The  
21 60-day period shall be extended for 30 days if any alternate  
22 decision is proposed pursuant to Section 311.

23 SEC. 5. Section 1701.4 of the Public Utilities Code is amended  
24 to read:

25 1701.4. (a) If the commission pursuant to Section 1701.1 has  
26 determined that a quasi-legislative case requires a hearing, the  
27 procedures prescribed by subdivisions (b) and (d) to (f), inclusive,  
28 shall be applicable.

29 (b) The assigned administrative law judge and any assigned  
30 technical advisory staff shall act as an assistant to the assigned  
31 commissioner in quasi-legislative cases. The assigned  
32 commissioner shall prepare the proposed rule or order with the  
33 assistance of the administrative law judge and any assigned  
34 technical advisory staff. The assigned commissioner shall present  
35 the proposed rule or order to the full commission in a public  
36 meeting. The report shall include the number of days of hearing  
37 and the number of days that the commissioner was present.

38 (c) Ex parte communications in quasi-legislative proceedings  
39 are permitted and not subject to the disclosure requirements of this  
40 article, except when the commission, ~~within 90 days of the~~



1 ~~commencement of a quasi-legislative proceeding, makes a formal~~  
2 ~~determination of~~ *by order or ruling, determines* either of the  
3 following.

4 (1) That ex parte communications are subject to the disclosure  
5 requirements of this article.

6 (2) That ex parte communications are prohibited and subject to  
7 the disclosure requirements of this article.

8 (d) Any party has the right to present a final oral argument of  
9 its case before the commission. Those requests shall be scheduled  
10 in a timely manner. A quorum of the commission shall be present  
11 for the final oral arguments.

12 (e) After the issuance of a proposed decision in a  
13 quasi-legislative case, the commission may hold an all-party  
14 conference before a quorum of commissioners at which all parties  
15 have an opportunity to be heard. The commission shall adopt rules  
16 for implementation of all-party conferences that ensure the broadest  
17 participation by parties to the proceeding that the commission can  
18 reasonably accommodate consistent with the commissioners' other  
19 duties and responsibilities.

20 (f) The commission may, in issuing its rule or order, adopt,  
21 modify, or set aside the proposed decision or any part of the rule  
22 or order. The final rule or order of the commission shall be issued  
23 not later than 60 days after the issuance of the proposed rule or  
24 order. Under extraordinary circumstances the commission may  
25 extend this date for a reasonable period. The 60-day period shall  
26 be extended for 30 days if any alternate rule or order is proposed  
27 pursuant to Section 311.

28 SEC. 6. Section 1701.5 of the Public Utilities Code is amended  
29 to read:

30 1701.5. (a) Except as specified in subdivision (b), in a  
31 ratesetting or quasi-legislative case, the commission shall resolve  
32 the issues raised in the scoping memo within 18 months of the date  
33 the proceeding is initiated, unless the commission makes a written  
34 determination that the deadline cannot be met, including findings  
35 as to the reason, and issues an order extending the deadline.

36 (b) Notwithstanding subdivision (a), the commission may  
37 specify in a scoping memo a resolution date later than 18 months  
38 from the date the proceeding is initiated, if that scoping memo  
39 includes specific reasons for the necessity of a later date and the  
40 commissioner assigned to the case approves the date.

SEC. 7. Section 1701.6 is added to the Public Utilities Code, to read:

1701.6. (a) In addition to any penalty, fine, or other punishment applicable pursuant to Article 11 (commencing with Section 2100), the commission may assess civil sanctions upon any entity or person, other than a decisionmaker or employee of the commission, who violates, fails to comply with, or procures, aids, or abets any violation of, the ex parte communication requirements of this article or those adopted by the commission pursuant to this article. The civil sanctions may include civil penalties, adverse consequences in commission proceedings, or other appropriate commission orders directed at the entity, person, or both the entity and person, committing the violation.

(b) (1) Except as provided in paragraph (2), a civil penalty assessed shall not exceed fifty thousand dollars (\$50,000) per violation. Each day of a continuing violation is a separate violation. If the violation consists of engaging in a communication that is prohibited by the ex parte communication requirements, each day that the violation is not disclosed to the commission and to parties of record in the formal proceeding in which the communication occurred shall constitute a separate violation.

(2) If the entity or person may obtain, by violating the ex parte communication requirements, financial benefits that exceed the maximum amount of civil penalty allowable pursuant to paragraph (1), the commission may impose a civil penalty up to the amount of those financial benefits.

(c) Civil penalties assessed pursuant to subdivision (b) upon entities whose rates are determined by the commission shall be in the form of credits to the customers of that entity. Civil penalties collected from other entities shall be deposited ~~in~~ into the General Fund.

(d) In determining the appropriate civil sanctions, the commission shall consider the following factors:

(1) The severity of the violation.

(2) The conduct of the entity or person, including the level of experience of the entity or person in participating in commission proceedings and whether the entity or person knowingly violated the ex parte communication requirements.

(3) The financial resources of the entity or person.

1 (4) The totality of the circumstances in furtherance of the public  
2 interest.

3 SEC. 8. Section 1701.7 is added to the Public Utilities Code,  
4 to read:

5 1701.7. (a) The Attorney General may bring an enforcement  
6 action in superior court against a decisionmaker or employee of  
7 the commission who violates, fails to comply with, or procures,  
8 aids, or abets any violation of, the ex parte communication  
9 requirements in this article or those adopted by the commission  
10 pursuant to this article.

11 (b) Notwithstanding Section 1759, in an enforcement action  
12 brought pursuant to this section, the court may grant appropriate  
13 relief, including disqualification of the decisionmaker from one  
14 or more proceedings and civil penalties as provided in Section  
15 2111.

16 (c) In determining the appropriate relief, the court may consider  
17 the following factors:

18 (1) The severity of the violation.

19 (2) The conduct of the decisionmaker or employee, including  
20 whether the decisionmaker or employee knowingly violated the  
21 ex parte communication requirements.

22 (3) The financial resources of the decisionmaker or employee.

23 (4) The totality of the circumstances in furtherance of the public  
24 interest.

25 (d) The Attorney General may compromise the enforcement  
26 action subject to approval by the court.

27 (e) Civil penalties collected pursuant to this section shall be  
28 deposited into the Litigation Deposits Fund established pursuant  
29 to Article 9 (commencing with Section 16425) of Chapter 2 of  
30 Part 2 of Division 4 of Title 2 of the Government Code.

31 SEC. 9. No reimbursement is required by this act pursuant to  
32 Section 6 of Article XIII B of the California Constitution because  
33 the only costs that may be incurred by a local agency or school  
34 district will be incurred because this act creates a new crime or  
35 infraction, eliminates a crime or infraction, or changes the penalty  
36 for a crime or infraction, within the meaning of Section 17556 of  
37 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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